

Regulatory Analysis Form

2000 OCT 24 AM 10:40

Regulatory Analysis Form

This space for use by IRRC

INDEPENDENT REGULATORY
REVIEW COMMISSION

(1) Agency

Pennsylvania Emergency Management Agency

(2) I.D. Number (Governor's Office Use)

~~#30-55~~

#30-56

#30-57

#30-58

IRRC Number:

2156

(3) Short Title

- Reductions of Major Water Use in the Delaware River Basin Drought Emergency Area
- Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area
- Philadelphia Drought Water Emergency Plan
- Local Water Rationing Plan

(4) PA Code Cite

4 Pa. Code Chapter 118

4 Pa. Code Chapter 119

4 Pa. Code Chapter 119a

4 Pa. Code Chapter 120

(5) Agency Contacts & Telephone Numbers

Primary Contact: Mark Goodwin 717-651-2010

Secondary Contact: Stuart Gansell 717-783-7420

(6) Type of Rulemaking (Check One)

☒ Proposed Rulemaking

☐ Final Order Adopting Regulation

☐ Final Order, Proposed Rulemaking Omitted

(7) Is a 120-Day Emergency Certification Attached?

☒ No

☐ Yes: By the Attorney General

☐ Yes: By the Governor

(8) Briefly explain the regulation in clear and non-technical language.

The revised regulations will be effective at all times, rather than only during declared drought emergencies. They will also be effective statewide, rather than only in the declared emergency area. This will enable the designation of a permanent Commonwealth Drought Coordinator (CDC) within the Department of Environmental Protection. It will authorize the CDC to receive and approve drought management plans on an ongoing basis from water users across the Commonwealth. While the regulations will remain in effect at all times, implementation of actual emergency provisions of the regulations, including the nonessential water use bans, would only be effective during a declared emergency and within the declared emergency area, as before.

Chapter 118

Chapter 118 requires the submittal of drought contingency plans by public water suppliers and major industrial/commercial water users. References limiting the effective area of the regulations to the Delaware River Basin are being removed from the regulations in order to make them applicable statewide.

Regulatory Analysis Form

(8) Continued...

To the extent practicable, references to the Pennsylvania Emergency Management Agency (PEMA) with regard to submittal and review of drought contingency plans are being removed from the regulations, and authority and responsibility for those activities are being delegated to the CDC, as agent for PEMA. In a similar manner, the current authorities and responsibilities of the Emergency Management Council in the appeal process are being assigned to PEMA and further delegated to the extent practicable to the Public Utility Commission's administrative law judges or others.

Chapter 119

Chapter 119 contains the bans on nonessential water use, which are effective during a declared drought emergency. Many revisions are being proposed in Chapter 119. As in Chapter 118, to the extent practicable, responsibilities and authorities are being delegated from the Council to PEMA and from PEMA to the CDC. These procedures again affect plan or variance submissions, reviews, approvals and appeals.

The effective emergency area is being expanded to include the complete service area of any public water supply agency whose source of water is located in the declared emergency area. The revisions provide that a public water supply agency whose sources are not in jeopardy, although located within a declared emergency area, may request a variance from the nonessential use bans, if the agency is following a drought contingency plan that was approved by the CDC within the previous three years.

Definitions have been added to clarify the meanings of athletic field, newly seeded and sodded grass, effective conservation, professional landscaper and irrigation contractor.

A new section is added to specifically address athletic fields, which were previously considered part of the "lawn" section. Separate regulations are provided for normal athletic fields and sand-based fields. Irrigation of sand-based fields will require metering and reporting and must be done according to a plan approved by the CDC. Normal athletic fields will be limited to watering one time per week; while sand-based fields will be limited to one and a half inches of water per week.

The golf course regulations have been completely rewritten. As with the sand-based athletic fields, irrigation of golf courses will require metering and reporting and must be done according to a plan approved by the CDC. The golf courses will be required to reduce their watering to 70 percent of the average daily quantity of water used, by month, in the previous 5 years, within lower and upper limits.

The grass and landscape/nursery sections of the regulations are being modified primarily to recognize the efficiencies in using automated irrigation systems, compared to the "hand-held bucket and hose" techniques allowed in the current regulations.

Fountains or waterfalls necessary to sustain fish life will be allowed to operate; water will be allowed to be used to replenish fish ponds and water gardens to sustain fish and aquatic life.

Revisions in the mobile equipment and paved surface sections recognize the need to wash

Regulatory Analysis Form

(8) Continued...

equipment or areas related to food vending and hauling. The use of a hand-held hose with automatic shutoff nozzle will be allowed, up to two minutes, for washing personal cars, recognizing that this will generally require less water than the "bucket" method allowed in the current regulations.

The fire hydrant regulations previously contained in Chapter 119a are being incorporated into Chapter 119; while Chapter 119a, which dealt specifically with Philadelphia, is being eliminated.

Chapter 119a

This chapter, which applies specifically to Philadelphia, is being eliminated and the section on fire hydrants is being incorporated into Chapter 119, as indicated above.

Chapter 120

This chapter applies solely to public and municipal water supply systems, and allows either the municipality or the water supply agency to institute water rationing if the bans on nonessential water uses effected through Chapter 119 are insufficient to protect local water supplies. The suggested revisions to this chapter are primarily procedural in nature, some of them reflecting the proposed assignments and delegations of authority from the Council and/or PEMA to PEMA and/or the CDC. Again, the appeal processes reflect the intended use of Public Utility Commission administrative law judges as hearing officers. In addition, procedures for amendment or repeal of an implemented rationing plan are being simplified.

(9) State the statutory authority for the regulation and any relevant state or federal court decisions.

Emergency Management Services Code (35 Pa. C.S. §§ 7101-7707).

(10) Is the regulation mandated by any federal or state law or court order, or federal regulation? If yes, cite the specific law, case or regulation, and any deadlines for action.

Emergency Management Services Code

Regulatory Analysis Form

(11) Explain the compelling public interest that justifies the regulation. What is the problem it addresses?

Introduction

The drought experience of 1998-99 offered insight into many ways in which the drought emergency regulations found at Chapters 118, 119 and 120 have become outdated with the passage of nearly 20 years since they were initially written and nearly 10 years since they were last revised. Technology and social trends have advanced in ways that earlier drafters of the regulations could not have envisioned. As an example, irrigation practices have advanced with new technologies, and it may now be more efficient to irrigate with automated irrigation systems than to water with a hand-held hose in many cases.

Overall, our experience has also shown us the potential for more efficient ways to manage water use during drought emergencies. For example, a permanent Commonwealth Drought Coordinator, with authority to approve drought plans prior to a drought, rather than during an emergency, would enable the Emergency Management Council to focus more clearly on drought emergency operations and at the same time provide for more meaningful reductions in and more efficient use of available water resources.

The proposed revision will move the Commonwealth toward full-time drought preparedness and management. It will authorize the CDC to receive and approve drought management plans on an ongoing basis from water users across the Commonwealth, thus allowing more opportunity to provide education and technical assistance to water users to guide them in the development of their individual drought plans. It will also allow more time for the CDC and related staff to adequately review plans and to approve them prior to an actual emergency.

Chapter 118

The Chapter 118 regulations were originally written to apply only to the Delaware River Basin portion of the Commonwealth. Many of the activities involved in submittal and review of drought contingency plans, as required by the regulations, included duplications of effort by both PEMA and the CDC.

Chapter 119

Problems were experienced previously when public water supply service areas extended beyond an emergency county into a non-emergency county, with the result that only a part of the service area was subject to emergency restrictions. Public water supply systems located within a declared emergency area may have adequate sources or reserves of water and are thus unnecessarily impacted by bans on nonessential water use.

Golf courses have been impacted to the extent of significant grass loss because of insufficient irrigation allowances, while others have been able to circumvent the nonessential water use restrictions because of inadequate enforcement ability in the current regulations.

Regulatory Analysis Form

(11) Continued...

Citizens were forced to request variances under the current regulations in order to protect fish and aquatic life in fish ponds and water gardens.

Similarly, variances were required in order to wash equipment or areas related to food vending and hauling.

Chapter 120

Procedural changes are required in order to reflect the proposed assignments and delegations of authority from the Council and/or PEMA to PEMA and/or the CDC. Procedures for amendment or repeal of an implemented rationing plan are complicated and confusing in the current regulations.

(12) State the public health, safety, environmental or general welfare risks associated with non-regulation.

Under the current regulations, many citizens are inconvenienced by the need to prepare and submit requests for variances from the nonessential water use regulations for certain forms of water use that are generally approved by the Commonwealth Drought Coordinator anyway, such as for operation of essential aeration equipment in fish ponds, or washing paved surfaces or mobile equipment associated with food vending or hauling. This poses unnecessary stress and/or loss of income or property to those individuals while awaiting approval of their requests. Many provisions of the current regulations no longer serve to manage water use in the most effective manner, as a result of changing technologies during the past 20 years, such as use of modern automatically-controlled irrigation equipment, thus posing unwarranted risk to both the environment and to health, safety and welfare.

While the Commonwealth has yet to experience a drought severe enough to warrant general cutbacks in industrial/commercial water uses, the revisions will clarify and effectuate statewide the requirements for such users to plan for cutbacks in order to protect life and health-sustaining water uses should such conditions occur.

(13) Describe who will benefit from the regulation. (Quantify the benefits as completely as possible and approximate the number of people who will benefit.

The revisions will help protect the livelihoods of thousands of individuals involved in the landscaping business across the Commonwealth, while at the same time managing water use for irrigation of gardens and shrubs far more effectively than do the current regulations. Thousands of organizations and schools owning athletic fields will be better able to protect their fields as well as the safety of their players as a result of the sweeping revisions to the athletic field regulations. Similarly, over 700 golf courses across the Commonwealth will be able to protect this multi-million dollar industry by being able to more effectively use the water allotted to them under the completely-revised golf course regulations. Hundreds of individuals involved in mobile power washing businesses will be able to sustain their livelihoods while more effectively restricting water use for washing allowed surfaces and mobile equipment. Thousands of citizens will benefit from the provisions for maintaining fish ponds and water gardens. Millions of citizens will benefit from the revised car-washing provisions.

Regulatory Analysis Form

(14) Describe who will be adversely affected by the regulation. (Quantify the adverse effects as completely as possible and approximate the number of people who will be adversely affected.)

We do not anticipate adverse effects resulting from the revisions. The revisions have all been developed to positively address adverse effects that resulted from the current regulations.

(15) List the persons, groups or entities that will be required to comply with the regulation. (Approximate the number of people who will be required to comply.)

- **Chapter 118 - Approximately 2000 public water supply systems and perhaps as many as 2500 large industrial/commercial users, statewide, would be affected, but these numbers would be restricted to the specific emergency area declared in any particular drought.**
- **Chapter 119 - The entire citizenry of the Commonwealth, but again restricted to the specific emergency area declared.**
- **Chapter 120 - Approximately 2000 public water supply systems, statewide, but this number would be limited generally to only a very few systems who may need to implement rationing in an emergency area.**

(16) Describe the communications with and input from the public in the development and drafting of the regulation. List the persons and/or groups who were involved, if applicable.

During preparation of the proposed revisions to the regulations, meetings were held with representatives of the golf course industry, athletic field owners (both public and private), the landscape and nursery industry, the public water supply industry (both public and private investor-owned), and the food processing industry. Additionally, three public information meetings were held in Pittsburgh, Harrisburg and Bethlehem, at which the revisions were described to the public in attendance. Comments were accepted from the public, as well as from the specific interest groups mentioned above, and all comments were considered and incorporated to the extent practicable in the final recommended revisions. Revisions relating to the interest group representatives were provided to them, and generally, their concurrence was secured.

(17) Provide a specific estimate of the costs and/or savings to the regulated community associated with compliance, including any legal, accounting or consulting procedures which may be required.

In general, the revisions will not result in additional costs to the regulated community. Exceptions may include the golf course and sand-based athletic field owners. In both of these cases, the revisions will require metering of irrigation water used during drought emergencies, and in the case of golf courses, metering of five prior years' irrigation water use will also be required. Meter installation costs for athletic fields should be less than \$250. For golf courses, meter installation should be in the \$700-1500 range, depending upon the size and type of meters required. Meter reading costs for athletic fields should be minimal. For golf courses, meter reading on a daily basis by grounds keepers should not impose any significant additional costs. Automatic recorders may be installed, if desired, to avoid the need for manual daily reading.

Regulatory Analysis Form

(17) Continued...

Savings will generally accrue to all the regulated community, to the extent that property and employment is protected by the revisions. These savings will occur in the form of reduced damage to or loss of grass or landscape materials, for not only the athletic field and golf course owners, but other businesses and homeowners as well. All the revisions have been designed to better protect property, health and employment. Jobs in the golf, landscape/nursery, mobile washing, and food processing and vending industries will be better protected. Athlete safety will be enhanced on athletic fields. Actual or estimated values for these savings, which will only accrue during an actual declared drought emergency, are not available.

(18) Provide a specific estimate of the costs and/or savings to local governments associated with compliance, including any legal, accounting or consulting procedures which may be required.

Because the revisions are designed to make the regulations clearer, and many of the compliance problems experienced with the current regulations are being addressed in the revisions, costs to local enforcement agencies should be reduced, or at least should not increase.

Local governments may experience additional costs associated with municipally-owned athletic fields or golf courses, as described in Question 17, above.

Savings, as described in Question 17, may likewise accrue to local governments or school districts, to the extent that they own or maintain athletic fields, golf courses and landscape/nursery materials. Health, safety and employment will be better protected for them also, as described in Question 17.

(19) Provide a specific estimate of the costs and/or savings to state government associated with the implementation of the regulation, including any legal, accounting, or consulting procedures which may be required.

The primary cost to DEP will be in staff time to review and approve irrigation plans submitted by approximately 800 golf courses and 50 sand-based athletic fields. Approximately 0.5 to 2.5 hours per plan may be required for review and approval. This represents a one-time resource commitment of up to 2000 man-hours. Semi-automation of the process may reduce this requirement significantly, perhaps to as little as 250-500 man-hours.

Savings will accrue to DEP through reduced time required for processing requests for variances from the non-essential water use bans. The revisions are designed to resolve most of the problems in the current regulations that led to requests for variances. In the 1999 drought, nearly 250 variance requests were processed, requiring approximately one man-hour each.

Regulatory Analysis Form

(20) In the table below, provide an estimate of the fiscal savings and costs associated with implementation and compliance for the regulated community, local government, and state government for the current year and five subsequent years.

| | Current FY Year | FY +1 Year | FY +2 Year | FY +3 Year | FY +4 Year | FY +5 Year |
|------------------------|--------------------|---------------|---------------|---------------|---------------|---------------|
| SAVINGS: | \$ | \$ | \$ | \$ | \$ | \$ |
| Regulated Community | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| Local Government | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| State Government | \$3000 | \$3000 | \$3000 | \$3000 | \$3000 | \$3000 |
| Total Savings | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| COSTS: | | | | | | |
| Regulated Community | \$812,500 | Unknown | Unknown | Unknown | Unknown | Unknown |
| Local Government | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| State Government | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| Total Costs | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| REVENUE LOSSES: | | | | | | |
| Regulated Community | \$812,500 | Unknown | Unknown | Unknown | Unknown | Unknown |
| Local Government | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |
| State Government | Unknown | (\$3000) | (\$3000) | (\$3000) | (\$3000) | (\$3000) |
| Total Revenue Losses | Unknown | Unknown | Unknown | Unknown | Unknown | Unknown |

(20a) Explain how the cost estimates listed above were derived.

(a) State government savings are based on 500 variances processed during droughts in the 1990s, or an average of 50 per year, at an assumed savings of one man-hour or \$60.00 apiece, resulting in \$3000 per year savings. Additional costs, primarily in staff time related to processing athletic field and golf course drought operations plans, are unknown.

(b) Regulated community costs are based upon an average meter installation cost of \$1000 for 800 golf courses and \$250 for 50 athletic fields.

Most costs, if any, and savings are listed as unknown due to the uncertainty of drought occurrence and the actual value of property or income savings that may result from the revisions.

(20b) Provide the past three year expenditure history for programs affected by the regulation.

Regulatory Analysis Form

| Program | FY - 3 | FY - 2 | FY - 1 | Current FY |
|---------|---------|---------|---------|------------|
| Unknown | Unknown | Unknown | Unknown | Unknown |
| | | | | |
| | | | | |
| | | | | |

(21) Using the cost-benefit information provided above, explain how the benefits of the regulation outweigh the adverse effects and costs.

Overall, this is not possible to answer because of the large number of unknowns. Just based upon the actual estimated costs presented, and assuming that each golf course could reasonably save in excess of \$1000 in costs for replacing fairway grass, there would be an overall net savings to golf courses resulting from the proposed revisions. Many immeasurable savings will accrue throughout the regulated community. Overall, those additional savings are anticipated to far outweigh the remaining costs to state government.

(22) Describe the non-regulatory alternatives considered and the costs associated with those alternatives. Provide the reasons for their dismissal.

Not Applicable

(23) Describe alternative regulatory schemes considered and the costs associated with those schemes. Provide the reasons for their dismissal.

Non-metered alternatives were discussed with the golf course and athletic field interests. Their preference was to use the metered approach.

(24) Are there any provisions that are more stringent than federal standards? If yes, identify the specific provisions and the compelling Pennsylvania interest that demands stronger regulation.

Not Applicable

Regulatory Analysis Form

(25) How does this regulation compare with those of other states? Will the regulation put Pennsylvania at a competitive disadvantage with other states?

Our nonessential water use restrictions are generally compatible with surrounding states, as witnessed during the 1999 drought that affected all neighboring states except Ohio and West Virginia. No competitive disadvantage is foreseen. Maryland, Delaware, New Jersey and New York are all currently revising their drought management regulations as well, and all four states are considering Pennsylvania's approach as a guide for fashioning their new regulations.

(26) Will the regulation affect existing or proposed regulations of the promulgating agency or other state agencies? If yes, explain and provide specific citations.

DEP regulations will not be affected by the revisions.

(27) Will any public hearings or informational meetings be scheduled? Please provide the dates, times, and locations, if available.

As indicated in Question 16, public meetings were held in Harrisburg, on April 5, 2000; in Bethlehem on April 6, 2000; and in Pittsburgh on April 18, 2000. Additionally, several meetings were held in Harrisburg, during December 1999 and January 2000, with representatives of the golf course, landscape/nursery, athletic field and public water supply interests.

(28) Will the regulation change existing reporting, record keeping, or other paperwork requirements? Describe the changes and attach copies of forms or reports which will be required as a result of implementation, if available.

During declared drought emergencies only, owners of golf courses and sand-based athletic fields will be required to report irrigation usage to the CDC, on a monthly basis. Owners of golf courses should record usage for a five-year period prior to a drought emergency; this information will be included in their application for approval of a drought operations plan.

No reporting forms have been developed at this time.

Regulatory Analysis Form

(29) Please list any special provisions which have been developed to meet the particular needs of affected groups or persons including, but not limited to, minorities, elderly, small businesses, and farmers.

While not affecting farmers directly, the mobile equipment washing restrictions are being revised to allow washing of feed trucks, to help prevent spread of animal diseases between farms. The regulations are being revised specifically to address problems previously encountered by owners and operators of public water supply systems, golf courses, athletic fields, landscape/nursery businesses, mobile power-wash businesses, food processing and vending businesses, fish ponds, water gardens, and automated landscape irrigation systems.

(30) What is the anticipated effective date of the regulation; the date by which compliance with the regulation will be required; and the date by which any required permits, licenses or other approvals must be obtained?

Although no specific date is specified, approval of the proposed regulation revisions is anticipated to occur prior to December 31, 2000. Compliance with the regulations is only required during a declared drought emergency. Provisions of the regulations that apply absent a declared drought emergency are optional and are to the advantage of the segments of the regulated community to which they may apply, such as golf courses, athletic fields and public water supply agencies. Drought operation plans must be approved prior to actual irrigation of golf courses or sand-based athletic fields during a declared drought emergency; therefore approval prior to a drought is to the advantage of owners of such facilities.

(31) Provide the schedule for continual review of the regulation.

The regulations, as in the past, will be reviewed during each declared drought emergency, in order to determine from actual experience any reasonable or necessary modifications.

**FACE SHEET
FOR FILING DOCUMENTS
WITH THE LEGISLATIVE REFERENCE BUREAU**

(Pursuant to Commonwealth Documents Law)

RECEIVED

2000 OCT 24 AM 10:40

LEGISLATIVE REFERENCE BUREAU
REVIEW COMMISSION

2154

DO NOT WRITE IN THIS SPACE

Copy below is hereby approved as to
form and legality Attorney General

Walter J. Jones
(DEPUTY ATTORNEY GENERAL)

OCT 16 2000

DATE OF APPROVAL

☐ Check if applicable
Copy not approved. Objections
attached.

Copy below is hereby certified to be a true and correct copy
of a document issued, prescribed or promulgated by:

**PENNSYLVANIA EMERGENCY
MANAGEMENT AGENCY**

(AGENCY)

DOCUMENT/FISCAL NOTE NO. 30-55

DATE OF ADOPTION: 8/11/00

BY: *David Smith*

DIRECTOR

TITLE: (EXECUTIVE OFFICER, CHAIRMAN OR SECRETARY)

Copy below is hereby approved as to
form and legality. Executive or Independent Agencies

BY: *R.E. Grimaldi*

8/24/00
DATE OF APPROVAL

(Deputy General Counsel)
(Chief Counsel, Independent Agency)
(Strike inapplicable title)

☐ Check if applicable. No Attorney General approval or objection within 30 days after submission.

Notice of

Proposed Rulemaking

Pennsylvania Emergency Management Agency

4 Pa. Code Chapter 118

**Reductions of Major Water Use in the Delaware River
Basin Drought Emergency Area**

RECEIVED

2000 OCT 24 AM 10:40

REVIEW COMMISSION

Notice of Proposed Rulemaking
Emergency Management Agency
(4 Pa. Code Chapters 118, 119, 119a and 120)

(Reductions of Major Water Use, Nonessential Water Uses, Water Emergency Plan
and Local Water Rationing Plans)

Preamble

The Pennsylvania Emergency Management Agency (PEMA) proposes to amend 4 Pa. Code Chapters 118, 119, 119a and 120 (relating to Reductions of Major Water Use in the Delaware River Basin Drought Emergency Area, Prohibition of Nonessential Water Uses in a Commonwealth Drought Emergency Area, Philadelphia Drought Water Emergency Plan and Local Water Rationing Plans). The proposed amendments to Chapter 118 will make them applicable statewide, rather than just in the Delaware River Basin. The proposed amendments to Chapter 119 include proposed changes to the definition section and to the list of exceptions to the nonessential water use bans. The provisions of Chapter 119a are proposed to be eliminated and to be incorporated into Chapter 119. The proposed amendments to Chapter 120 are primarily procedural. Overall, the proposed amendments will move the Commonwealth toward full-time drought preparedness and management. Implementation of actual emergency provisions of the regulations, including the nonessential water use bans, will only be effective during a declared drought emergency and within the declared drought emergency area.

A. Effective Date

These amendments will go into effect upon publication in the *Pennsylvania Bulletin* as final rulemaking.

B. Contact Persons

For further information, contact Mark L. Goodwin, Chief Counsel, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-9364, (717) 651-2010. Information regarding submitting comments on these proposed regulations appear in Section I of this preamble. This proposal is available electronically through the PEMA web site at <http://www.pema.state.pa.us>. It is also available on the Department of Environmental Protection web site at <http://www.dep.state.pa.us> by choosing "Subjects" then "Drought Information" and then clicking on "Drought Regulations."

C. Statutory Authority

The proposed rulemaking is being made under the authority of Section 7313(3) of the Pennsylvania Emergency Management Services Code (Code), 35 Pa.C.S. § 7313(3), which grants PEMA the authority to adopt such rules and regulations as may be deemed necessary to carry out the provisions of the Code.

D. Background and Purpose

The drought experience of 1998-99 offered insight into many ways in which the drought emergency regulations found at Chapters 118, 119, 119a and 120 have become outdated with the passage of nearly 20 years since they were initially written and nearly 10 years since they were last revised. Technology and social trends have advanced in ways that earlier drafters of the regulations could not have envisioned. As an example, irrigation practices have advanced with new technologies, and it may now be more efficient to irrigate in many cases with automated irrigation systems than to water with a hand-held hose.

Overall, the Commonwealth's experience with droughts has also shown the potential for more efficient ways to manage water use during drought emergencies. Experience has shown, for example, that a permanent Commonwealth Drought Coordinator (CDC), with authority to approve drought plans prior to a drought, rather than during an emergency, would enable the Agency to focus more closely on drought emergency operations, and at the same time would provide for more meaningful reductions in and more efficient use of available water resources.

The proposed amendments will move the Commonwealth toward full-time drought preparedness and management. Implementation of actual emergency provisions of the regulations, including the nonessential water use bans, will only be effective during a declared drought emergency and within the declared drought emergency area, as is presently the case. However, the revised regulations will be effective at all times, rather than only during declared drought emergencies. They will also be effective statewide, rather than only in the declared emergency area. This will enable the designation of a permanent Commonwealth Drought Coordinator within the Department of Environmental Protection (DEP). The proposed regulations will authorize the CDC to receive and approve drought management plans on an ongoing basis from water users across the Commonwealth, thus allowing more opportunity to provide education and technical assistance to water users to guide them in the development of their individual drought plans. It will also allow more time for the CDC and DEP staff to adequately review plans and to approve them prior to an actual emergency. This is in concert with new provisions in the regulations that require certain classes of water users, such as golf courses, to operate according to an approved plan during an emergency.

Drafts of the proposed amendments were made available at informational meetings held during April 2000 in Harrisburg, Bethlehem and Pittsburgh. Notices of the

meetings and the availability of the draft regulations also were published in newspapers of general circulation across the Commonwealth and in the *Pennsylvania Bulletin* with a public comment period that ended April 30, 2000. The public comment received has been taken into consideration in the drafting of these proposed amendments to the drought regulations.

E. Summary of Regulatory Requirements

1. *Discussion of Proposed Amendments to Chapter 118*

The Chapter 118 regulations were originally written to apply only to the Delaware River Basin portion of the Commonwealth. References to the Delaware River Basin are being removed from the regulations in order to make them applicable statewide. Many of the activities involved in submittal and review of drought contingency plans, as required by the regulations, included duplications of effort by both PEMA and the CDC. To the extent practicable, references to PEMA with regard to those activities are being removed from the regulations, and authority and responsibility for those activities are being delegated to the CDC, as agent for PEMA. In a similar manner, the current authorities and responsibilities of the Pennsylvania Emergency Management Council in the appeal process, are being assigned to PEMA and further delegated to the extent practicable to the Public Utility Commission's administrative law judges or others.

In Section 1, definitions of "consumptive water", "designated drought emergency area", and "water user" have been added, and the definitions of "Commonwealth Drought Coordinator" has been revised, consistent with Chapters 119 and 120.

In Section 2, the requirement for drought contingency plans has been limited to only those public water suppliers serving more than 50 customer connections.

In Section 3, the scope has been revised to include the entire Commonwealth, rather than just the Delaware River Basin.

In Section 4, revisions will allow the CDC as well as the Governor's Emergency Proclamation to order preparation of drought contingency plans by public water suppliers, including those whose sources or service areas may be located within the emergency area. Plans approved by the CDC within 3 prior years will meet the requirement. Provisions and criteria for variances from the plans are added to the requirements.

Section 5 revisions will allow the CDC as well as the Governor's Emergency Proclamation to order preparation of drought contingency plans by large self-supplied industrial and commercial water users.

Section 6 is revised to include criteria to guide the CDC's consideration of equitable reductions when ordering the implementation of industrial/commercial contingency plans.

Section 8 revisions clarify and improve the due process protections provided to those parties who request variances due to extraordinary hardship.

Section 9 establishes requirements for establishment and operations of county drought management task forces.

2. *Discussion of Proposed Amendments to Chapter 119*

Chapter 119 contains the bans on nonessential water use, which are effective during a declared drought emergency. Many revisions are being proposed in Chapter 119. As in Chapter 118, to the extent practicable, responsibilities and authorities are being assigned from the Council to PEMA and delegated from PEMA to the CDC. These procedures again affect plan or variance submissions, reviews, approvals and appeals.

The effective emergency area is being expanded to include the complete service area of any public water supply agency whose source of water is located in the declared emergency area. This will eliminate problems experienced previously when public water supply service areas extended beyond an emergency county into a non-emergency county with the result that only a part of the service area was subject to emergency restrictions.

In Section 1, definitions have been added or revised to clarify the meanings of athletic field, effective conservation, irrigation contractor, newly seeded and sodded grass, paved surface, and professional landscaper and for consistency with Chapters 118 and 120.

In Section 4, revisions are added to specifically address athletic fields, which were previously considered part of the "lawn" section. Regulations are provided separately for normal athletic fields and sand-based fields, because the sand-based fields (similar to golf greens) require more frequent and greater quantities of watering. Irrigation of sand-based fields will require metering and reporting and must be done according to a plan approved by the CDC. Normal athletic fields will be limited to watering one time per week; while sand-based fields will be limited to one and a half inches of water per week.

The golf course regulations in Section 4 have been rewritten. As with the sand-based athletic fields, irrigation of golf courses will require metering and reporting and must be done according to a plan approved by the CDC. The golf courses will be required to reduce their watering to 70 percent of the average daily quantity of water used, by month, in the previous 5 years, within lower and upper limits.

The Section 4 grass and landscape/nursery regulations are being modified primarily to recognize the efficiencies in using automated irrigation systems, compared to the "hand-held bucket and hose" techniques allowed in the current regulations.

Fountains or waterfalls necessary to sustain fish life will be allowed to operate under Section 4 revisions; water will be allowed to be used to replenish fish ponds and water gardens to sustain fish and aquatic life.

Revisions in the mobile equipment and paved surface regulations in Section 4 recognize the need to wash equipment or areas related to food vending and hauling. The use of a hand-held hose with automatic shutoff nozzle will be allowed, up to two minutes,

for washing personal cars. This process will generally require less water than the "bucket" method allowed in the current regulations.

The fire hydrant regulations previously contained in Chapter 119a are being incorporated into Section 4; while Chapter 119a, which dealt specifically with the County/City of Philadelphia, is being eliminated.

In Section 6, the revisions provide that a public water supply agency whose sources are not in jeopardy, although located within a declared emergency county, may request a variance from the nonessential use bans, if the agency is following a drought contingency plan that was approved by the CDC within the previous three years.

Section 6 variance procedures are modified to improve due process.

Section 7 is being stricken in order to make the regulations effective full-time; although restrictions will only be effective during a declared drought emergency.

3. *Discussion of Proposed Amendments to Chapter 119a*

This chapter, which applies specifically to the County/City of Philadelphia, is being eliminated and the section on fire hydrants is being incorporated into Chapter 119, Section 4, as indicated above.

4. *Discussion of Proposed Amendments to Chapter 120*

This chapter applies solely to public and municipal water supply systems and allows either the municipality or the water supply agency to institute water rationing if the bans on nonessential water uses effected through Chapter 119 are insufficient to protect local water supplies. The suggested revisions to this chapter are primarily procedural in nature, some of them reflecting the proposed assignments and delegations of authority from the Council and/or PEMA to PEMA and/or the CDC. Revisions are included to improve due process and notification provisions.

Section 1 definitions have been revised for consistency with Chapters 118 and 119 definitions.

Section 2 revisions authorize the CDC to approve water rationing plans, as an agent of PEMA.

In Section 9, the appeal processes reflect the intended use of Public Utility Commission administrative law judges as hearing officers.

Section 10 is being deleted, as unnecessary. It is not envisioned that a rationing plan would be suspended. Water supply recovery would result in repeal rather than suspension of the rationing plan.

In Section 14, the repeal process has been clarified and simplified.

F. **Benefits, Costs and Compliance**

Benefits

The proposed amendments to the regulations will benefit the public by protecting water resources during a declared drought emergency and will prevent water supply shortages by curtailing nonessential water use. The procedures will be streamlined for adoption of drought contingency plans and local water rationing plans.

The exact fiscal impact of the proposed amendments cannot be calculated. For most affected persons or businesses, the impact will be positive in terms of reducing possible economic hardship. Paperwork will be reduced by the proposed amendments to Chapter 119 by reducing the number of variance applications prepared by individuals, business and industry. Additionally, DEP and PEMA will not have to process as many applications.

The benefits of the proposed amendments in conserving a natural resource are impossible to quantify. Reductions in water use, although inconvenient to many users, will serve to extend available supplies, thus insuring that water is available for public health and safety needs and economic productivity. The availability of existing supplies will be extended by reducing the daily withdrawal of water from sources, providing an opportunity for replenishment over time should there be adequate precipitation. Extending water supplies also provides an opportunity for water suppliers to develop alternative sources of water.

Savings will generally accrue to all the regulated community, to the extent that property and employment is protected by the revisions. These savings will occur in the form of reduced damage to or loss of grass or landscape materials, for not only the athletic field and golf course owners, but other businesses and homeowners as well. All the revisions have been designed to better protect property, health and employment. Jobs in the golf, landscape/nursery, mobile washing, and food processing and vending industries will be better protected. Athlete safety will be enhanced on athletic fields. Actual or estimated values for these savings, which will only accrue during an actual declared drought emergency, are not available.

Savings may likewise accrue to local governments or school districts, to the extent that they own or maintain athletic fields, golf courses and landscape/nursery materials. Health, safety and employment will be better protected for them also.

Savings will accrue to DEP through reduced time required for processing requests for variances from the non-essential water use bans. The revisions are designed to resolve most of the problems in the current regulations that lead to requests for variances. In the 1999 drought, nearly 250 variance requests were processed, requiring approximately one man-hour each.

Compliance Costs

In general, the revisions will not result in additional costs to the regulated community. Exceptions may include golf course and sand-based athletic field owners. In both of these cases, the revisions will require metering of irrigation water used during drought emergencies, and in the case of golf courses, metering of five prior years' irrigation water use will also be required. Meter installation costs for athletic fields should be less than \$250. For golf courses, meter installation should be in the \$700-1500 range, depending upon the size and type of meters required. Meter reading costs for athletic fields should be minimal. For golf courses, meter reading on a daily basis by grounds keepers should not impose any significant additional costs. Automatic recorders may be installed, if desired, to avoid the need for manual daily reading.

Because the revisions are designed to make the regulations clearer, and more efficient, and many of the compliance problems experienced with the current regulations are being addressed in the revisions, costs to local enforcement agencies should be reduced. Local governments may experience additional costs associated with municipally-owned athletic fields or golf courses, as described above.

The primary cost to DEP will be in staff time to review and approve irrigation plans submitted by approximately 800 golf courses and 50 sand-based athletic fields. Approximately 0.5 to 2.5 hours per plan may be required for review and approval. This represents a one-time resource commitment of up to 2000 man-hours. Semi-automation of the process may reduce this requirement significantly, perhaps to as little as 250-500 man-hours.

Compliance Assistance Plan

DEP provides guidance, sample plans and technical assistance to public water suppliers for developing drought contingency plans, water rationing plans and water conservation plans and programs. Similar materials will be developed for industrial/commercial water users to aid them in development of drought contingency plans, to the extent practicable.

Web-based, self-instructional application forms will be developed for submitting golf course and athletic field drought operations plans, and technical assistance will be provided as appropriate.

Paperwork Requirements

Owners of golf courses and sand-based athletic fields will be required to submit a drought operations plan for approval by the CDC, prior to irrigation of such facilities within a declared drought emergency area. The regulations will allow submittal and approval of such plans prior to the declaration of an emergency, at the option and advantage of the owner.

During declared drought emergencies only, owners of golf courses and sand-based athletic fields within the declared emergency area will be required to report irrigation usage to the CDC, on a monthly basis. Owners of golf courses should also record usage for a five-year period prior to a drought emergency. This information will be included in their application for approval of a drought operations plan.

Owners of public water supply systems and large self-supplied industrial or commercial water users whose sources or service areas are located within a declared emergency area may be required by the Governor or the CDC to submit drought contingency plans, during the declared emergency. The regulations provide for the submittal and approval of such plans prior to an emergency, again at the option and advantage of the owner.

G. Sunset Review

These regulations will be reviewed in accordance with the sunset review schedule published by PEMA to determine whether the regulations effectively fulfill the goals for which they were intended.

H. Regulatory Review

Under Section 5(a) of the Regulatory Review Act (71 P.S. 745.5(a)), on October 24-, 2000, the Agency submitted a copy of these proposed amendments to the Independent Regulatory Review Commission (IRRC) and the Chairpersons of the House Veterans Affairs and Emergency Preparedness Committee and Senate State Government Committee. In addition to submitting the proposed amendments, the Agency has provided IRRC and the Committees with a copy of a detailed regulatory analysis form prepared by the Agency in compliance with Executive Order 1996-1, "Regulatory Review and Promulgation." A copy of this material is available to the public upon request.

Under Section 5(g) of the Regulatory Review Act, if IRRC has objections to any portion of the proposed amendments, it will notify the Agency within 10 days of the close of the Committees' review period. The notification shall specify the regulatory review criteria which have not been met by that portion of the proposed amendments to which an objection is made. The Regulatory Review Act specifies detailed procedures for review, prior to final publication of the amendments, by the Agency, the General Assembly and the Governor of objections raised.

I. Public Comment

Written Comments – Interested persons are invited to submit comments, suggestions, or objection regarding the proposed regulation to Mark L. Goodwin, Pennsylvania Emergency Management Agency, 2605 Interstate Drive, Harrisburg, PA 17110-9364. Comments submitted by facsimile will not be accepted. Comments, suggestions, or objections must be received by the Agency by _____, 2000 (within 30 days of publication in the *Pennsylvania Bulletin*).

Electronic Comments – Comments may be submitted electronically to PEMA at mgoodwin@state.pa.us and must also be received by the Agency by _____, 2000. A subject heading of the proposal and a return name and address must be included in each transmission. If an acknowledgement of electronic comments is not received by the sender within two working days, the comments should be retransmitted to ensure receipt.

BY:

David L. Smith, Director
Pennsylvania Emergency Management Agency

CHAPTER 118. REDUCTIONS OF MAJOR WATER USE IN ~~THE DELAWARE RIVER~~ BASIN A COMMONWEALTH DROUGHT EMERGENCY AREA

Sec.

118.1. Definitions

118.2. Purpose.

118.3. Scope.

118.4. Contingency plans—public water supply agencies.

118.5. Contingency plans—self supplied commercial and industrial users.

118.6. Implementation of reductions BY SELF-SUPPLIED INDUSTRIAL AND COMMERCIAL WATER USERS.

118.7. Penalties and enforcement.

118.8. Procedure for exemptions or variance from water use reduction BY SELF-SUPPLIED INDUSTRIAL AND COMMERCIAL WATER USERS.

118.9 COUNTY DROUGHT MANAGEMENT TASK FORCE.

~~118.9. Implementation period~~

~~118.10. Effective date.~~

§ 118.1. Definitions.

The following words and terms, when used in this chapter, have the following meanings, unless the context clearly indicates otherwise:

~~Any water—Any type of water, including fresh water, brackish water, waste water or reclaimed waste water.~~

~~Brackish water—Water containing more than 1000 parts per million of dissolved salts.~~

~~Commission—The Delaware River Basin Commission, created by the Delaware Basin Compact (32 P.S. §§ 815-101—815-106).~~

Commonwealth Drought Coordinator – An officer of the Department appointed by the Secretary of the Department, ~~in consultation with the Governor and PEMA,~~ to carry out responsibilities established in the Pennsylvania Drought Contingency Plan to coordinate Commonwealth PLANNING, PREPAREDNESS AND response action to a drought or water shortage emergency.

CONSUMPTIVE WATER -- WATER THAT IN THE PROCESS OF BEING USED OR IS EVAPORATED, TRANSPIRED OR INCORPORATED INTO A PRODUCT.

~~Council—The Pennsylvania Emergency Management Council, created by 35 Pa. C.S. §§ 7101—7707 (relating to emergency management services) and section 2 of the act of November 26, 1978 (P.L. 1332, No. 323).~~

~~*Delaware River Basin*—The area of drainage into the Delaware River and its tributaries, including the Delaware Bay.~~

Department – The Department of Environmental Resources PROTECTION of the Commonwealth.

DESIGNATED DROUGHT EMERGENCY AREA – THE AREA OF THE COMMONWEALTH DESCRIBED IN THE GOVERNOR'S PROCLAMATION OR EXECUTIVE ORDER DECLARING A STATE OF DROUGHT AND WATER SHORTAGE EMERGENCY.

~~*Fresh water*—Water withdrawn from a surface or groundwater source, or from a public water supply system, located within the Delaware River Basin, which has not been previously used, other than brackish water and water from a nonpotable source. The term does not include water collected directly from precipitation in rain barrels or cisterns.~~

PEMA – The Pennsylvania Emergency Management Agency, created by 35 Pa. C.S. §§ 7101–7707 (relating to emergency management services) and section 2 of the act of November 26, 1978 (P.L. 1332, No. 323).

Public water supply agency – A person, partnership, association, corporation, municipality or municipal authority, district or other entity supplying or authorized to supply water to the public "COMMUNITY WATER SYSTEM" AS THAT TERM IS DEFINED IN THE PENNSYLVANIA SAFE DRINKING WATER ACT, ACT 43 OF 1984, 35 P.S. §721.3.

~~*Reclaimed water*—Waste water which has been treated to allow reuse.~~

~~*Secretary*—The Secretary of the Department.~~

~~*Waste water*—Water which has been previously used for industrial, municipal, domestic or other purposes, and has not been returned to the surface or ground water sources.~~

~~*Water from a non-potable source*—Water from the surface or groundwater source which the Department determines is not used for public or private drinking water supply, and is not capable of being rendered suitable for drinking water supply by standard and economically feasible methods of treatment.~~

WATER USER—AN INDIVIDUAL, PARTNERSHIP, ASSOCIATION, COMPANY, CORPORATION, MUNICIPALITY, MUNICIPAL AUTHORITY, POLITICAL SUBDIVISION OR AN AGENCY OF FEDERAL, STATE, COUNTY OR MUNICIPAL GOVERNMENT. THE TERM INCLUDES THE OFFICERS, EMPLOYEES AND AGENTS OF A PARTNERSHIP, ASSOCIATION, COMPANY, CORPORATION, MUNICIPALITY, MUNICIPAL AUTHORITY, POLITICAL SUBDIVISION OR AN AGENCY OF FEDERAL, STATE, COUNTY OR MUNICIPAL GOVERNMENT.

118.2. Purpose.

This chapter provides for the preparation and implementation of contingency plans BY PUBLIC WATER SUPPLY AGENCIES PROVIDING SERVICE TO 50 OR MORE CUSTOMER CONNECTIONS, AND BY MAJOR COMMERCIAL AND INDUSTRIAL WATER USERS, to reduce water use ~~by public water supply agencies, and by major commercial and industrial water users,~~ in response to ~~the~~ A state of drought and water shortage emergency within specified areas of this Commonwealth's ~~portion of the Delaware River Basin.~~ The objective of this chapter is to conserve water, to balance demand with limited available supplies, and to assure that sufficient water is available to serve essential health, safety and economic needs. This chapter is intended to implement the Pennsylvania Drought Contingency Plan, and ~~to assist in implementing the conservation orders promulgated by the Commission under Article 10 of the Delaware River Basin Compact (32 P.S. § 815.101)~~ A GOVERNOR'S PROCLAMATION OF DROUGHT EMERGENCY THAT DIRECTS ~~by directing~~ the preparation of contingency plans and implementation of water use reductions ~~in a manner comparable to other Delaware River Basin States and consistent with the requirements of the Commission.~~

§118.3. Scope.

This chapter applies to all water uses within THE COMMONWEALTH. ~~this Commonwealth's portion of the Delaware River Basin, which are included in the Governor's Proclamation or Executive Order as being included in that area declared to be in a state of drought or water shortage emergency. The area may encompass all or part of the following counties: Berks, Bucks, Carbon, Chester, Delaware, Lackawanna, Lebanon, Lehigh, Luzerne, Monroe, Montgomery, Northampton, Philadelphia, Pike, Schuylkill, and Wayne, or it may be limited to specific designated areas within the Delaware River Basin.~~

§118.4. Contingency plans—public water supply agencies.

(a) Preparation and submission.

(1) ~~By May 27, 1985~~ WITHIN THE TIMEFRAME SPECIFIED IN THE GOVERNOR'S PROCLAMATION OF DROUGHT EMERGENCY OR ORDER ISSUED DURING SUCH EMERGENCY BY THE COMMONWEALTH DROUGHT COORDINATOR each public water supply agency WHICH PROVIDES SERVICE TO 50 OR MORE CUSTOMER connections and WHICH HAS EITHER A SOURCE OF WATER OR A SERVICE AREA ~~within the designated drought emergency area shall develop, adopt, and submit a drought contingency plan meeting the requirements set forth in this section.~~

(2) ~~Each~~ SUCH A public water supply agency shall submit three copies of the drought contingency plan to the Commonwealth Drought Coordinator, for distribution to PEMA, the Department and other interested Commonwealth agencies, INCLUDING THE PUBLIC UTILITY COMMISSION IF APPLICABLE. Each public water supply agency shall submit a copy of the drought contingency plan to the counties in which the PUBLIC water supply agency serves water.

(3) If a public water supply agency has previously prepared and submitted to the ~~Department~~ COMMONWEALTH DROUGHT COORDINATOR a drought contingency plan containing the information required by this section AND SUCH PLAN WAS APPROVED BY THE

COMMONWEALTH DROUGHT COORDINATOR, OR HIS DESIGNEE, NOT MORE THAN THREE YEARS PRIOR TO THE GOVERNOR'S PROCLAMATION OF DROUGHT EMERGENCY, the plan may be deemed to satisfy the requirements of this section; however, the public water supply agency may affirm, modify or amend the plan as it deems appropriate, THROUGH SUBMITTAL OF A MODIFIED OR AMENDED PLAN TO THE COMMONWEALTH DROUGHT COORDINATOR FOR APPROVAL.

(b) *Contents.* Drought contingency plans for public water supply agencies shall, at a minimum, contain the following:

(1) The name, address and telephone number of the public water supply agency, and the names of officers or other persons responsible for directing operations during a drought emergency.

(2) A description of the ground and surface water sources utilized by the system, including all interconnections, and the locations and yields of the sources.

(3) Data indicating the monthly average and peak day rates of withdrawal from each source for each calendar month during the previous calendar year, or most recent 12 month period for which the data is available.

(4) Data indicating the monthly average and peak day rates of water use in the system for each calendar month during the previous calendar year, or the most recent 12 month period for which data is available.

(5) A description of criteria to be used by the agency in identifying the onset of water shortage problems in the system.

(6) A plan of actions which will be taken by the public water supply agency to respond to drought or water shortage conditions, including PUBLIC NOTICE, a water conservation program, development of emergency supplies, and rationing. The plan shall provide for actions to be taken to achieve a phased reduction of total system withdrawal and use ~~by the amounts of 5.0%, 15%, 25%, 35% and 50% of the rates of water withdrawal and use existing during nondrought periods.~~

(7) A PROCEDURE FOR THE GRANTING OF VARIANCES OR EXEMPTIONS TO THE PROVISIONS OF A PLAN TO ADDRESS EXTRAORDINARY HARDSHIPS WHICH MAY EXIST AS A RESULT OF A PLAN, INCLUDING A PROVISION FOR APPEAL AS SPECIFIED IN 4 PA CODE 120.9(D). FOR PURPOSES OF THIS SECTION, EXTRAORDINARY HARDSHIP MEANS A PERMANENT DAMAGE TO PROPERTY, INCLUDING PERISHABLE RAW OR PROCESSED PRODUCT, OR OTHER PERSONAL OR ECONOMIC LOSS WHICH IS SUBSTANTIALLY MORE SEVERE THAN THE SACRIFICES BORNE BY OTHER WATER USERS SUBJECT TO PUBLIC WATER SUPPLY AGENCY'S DROUGHT CONTINGENCY PLAN. SUCH PROCEDURE SHALL INCLUDE, WHERE APPROPRIATE, CONSIDERATION OF :

(I) THE RELATIVE IMPACT OF WATER USE REDUCTIONS UPON: PUBLIC HEALTH AND SAFETY, INCLUDING PHARMACEUTICALS; FOOD AND RAW FIBER PRODUCTION, INCLUDING CONSIDERATION FOR PROTECTION OF PERISHABLE RAW OR PROCESSED PRODUCTS; PROVISION OF ESSENTIAL PUBLIC UTILITY SERVICES; AND THE MAINTENANCE OF EMPLOYMENT.

(II) THE MEASURES AND EFFORTS PREVIOUSLY UNDERTAKEN TO CONSERVE WATER OR TO PROVIDE FOR WATER STORAGE AND RELEASES, AND THE ABILITY OF USERS TO IMPLEMENT ADDITIONAL CONSERVATION MEASURES.

(C) *IMPLEMENTATION OF CONTINGENCY PLANS BY PUBLIC WATER SUPPLY AGENCIES* – EACH PUBLIC WATER SUPPLY AGENCY WHICH HAS EITHER A SOURCE OF WATER OR A SERVICE AREA WITHIN THE DESIGNATED DROUGHT EMERGENCY AREA SHALL IMPLEMENT ITS APPROVED DROUGHT CONTINGENCY PLAN DURING THE EFFECTIVE PERIOD OF THE GOVERNOR'S PROCLAMATION OF DROUGHT EMERGENCY.

118.5. Contingency plans—self supplied commercial and industrial users.

(a) Preparation and submission.

(1) ~~By May 27, 1985~~ WITHIN THE TIMEFRAME SPECIFIED IN THE GOVERNOR'S PROCLAMATION OF DROUGHT EMERGENCY OR ORDER ISSUED DURING SUCH EMERGENCY BY THE COMMONWEALTH DROUGHT COORDINATOR, THE ~~each~~ owner or operator of a commercial or industrial facility which withdraws ground or surface water WITHIN THE DESIGNATED DROUGHT EMERGENCY AREA ~~from the Delaware River Basin~~ in excess of an average of 100,000 gallons per day in any 30 day period shall develop and adopt, and have available for inspection at the facility, a drought contingency plan under this section.

(2) ~~By May 27, 1985~~ WITHIN THE TIMEFRAME SPECIFIED IN THE GOVERNOR'S PROCLAMATION OF DROUGHT EMERGENCY OR ORDER ISSUED DURING SUCH EMERGENCY BY THE COMMONWEALTH DROUGHT COORDINATOR the owner or operator of A commercial or industrial facility which withdraws ground or surface water WITHIN THE DESIGNATED DROUGHT EMERGENCY AREA ~~from the Delaware River Basin~~ in excess of an average of 500,000 gallons per day in a ANY 30 day period shall develop, ADOPT and submit a drought contingency plan to the Commonwealth Drought Coordinator.

(3) DURING THE EFFECTIVE PERIOD OF THE GOVERNOR'S PROCLAMATION OF DROUGHT EMERGENCY, ~~the Commonwealth Drought Coordinator, Council or PEMA,~~ may direct the owner or operator of ~~another~~ ANY commercial or industrial facility ~~subject to this section~~ NOT INCLUDED IN PARAGRAPH (2) OF THIS SUBSECTION, WHOSE SOURCE OF WATER IS LOCATED WITHIN THE DESIGNATED DROUGHT

EMERGENCY AREA, to ~~file~~ DEVELOP, ADOPT and submit a drought contingency plan ~~within a reasonable time with~~ TO the Commonwealth Drought COORDINATOR WITHIN A REASONABLE TIME.

(b) Contents. Drought contingency plans for self-supplied commercial and industrial facilities shall, at a minimum, contain the following:

(1) The name, address and telephone number of the owner or operator of the facility and officers or other persons responsible for directing actions undertaken under the drought contingency plan.

(2) A description of the ground and surface water sources utilized by the facility, including interconnections with public water supply agencies, and the locations and yields of those sources.

(3) A description of the processes utilizing water at the facility.

(4) Data regarding the monthly average and peak day rate of total withdrawal and use and the monthly average and peak day rate of consumptive water use, at the facility, during the previous calendar year or most recent 12 month period for which the data is available.

(5) A description of the method, location and rates of waste water disposal from the facility.

(6) A description of ~~conservation~~ measures previously undertaken to ~~reduce~~ CONSERVE water use at the facility OR TO PROVIDE FOR WATER STORAGE AND RELEASES, and potential measures which could be implemented to reduce water use under emergency conditions. The descriptions should include information regarding the impacts of the measures on the production, employment, and economics of the facility, INCLUDING CONSIDERATION FOR PROTECTION OF PERISHABLE RAW OR PROCESSED PRODUCTS.

(7) A plan of actions which ~~will~~ CAN be undertaken at the facility in response to drought and water shortage conditions to achieve a phased reduction of total withdrawal and use by amounts of ~~5-05%~~, 15%, 25%, 35% and 50% of the rates of water withdrawal and use existing during non-drought periods.

§118.6. Implementation of reductions BY SELF-SUPPLIED INDUSTRIAL AND COMMERCIAL WATER USERS.

(a) As necessary to respond to drought and water shortage conditions, DURING THE EFFECTIVE PERIOD OF THE GOVERNOR'S PROCLAMATION OF DROUGHT EMERGENCY, THE COMMONWEALTH DROUGHT COORDINATOR, ~~Council~~ may order equitable reductions of water withdrawal and use by ~~public water supply agencies and~~ self-supplied industrial and commercial facilities WITHIN THE DESIGNATED DROUGHT EMERGENCY AREA. In determining the amount of equitable reductions, the ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR will consider, IN PRIORITY ORDER:

~~(1) The measures and efforts previously undertaken by public water supply agencies, and self-supplied industrial and commercial facilities, to conserve water, and the ability of users to implement additional conservation measures.~~

(21) The relative impact of water use reductions upon: public health and safety, INCLUDING PHARMACEUTICALS;; food and raw fiber production, INCLUDING CONSIDERATION FOR PROTECTION OF PERISHABLE RAW OR PROCESSED PRODUCTS;; provision of essential public utility services;; and the maintenance of employment.

(2) THE MEASURES AND EFFORTS PREVIOUSLY UNDERTAKEN BY SELF-SUPPLIED INDUSTRIAL AND COMMERCIAL FACILITIES TO CONSERVE WATER OR TO PROVIDE FOR WATER STORAGE AND RELEASES, AND THE ABILITY OF USERS TO IMPLEMENT ADDITIONAL CONSERVATION MEASURES.

(b) Each ~~public water supply agency and the~~ owner or operator of each self-supplied commercial or industrial facility shall implement, under the contingency plans required under ~~§§ 118.4 and 118.5~~ (relating to contingency plans ~~public water supply agencies and contingency plans~~ self supplied commercial and industrial users) measures that are necessary to achieve the withdrawal and use reductions ordered by the ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR.

(c) Notice of orders issued by the ~~Council~~ COMMONWEALTH DROUGHT COORDINATOR to implement reductions will be provided to affected users by notice published in the *Pennsylvania Bulletin* and in newspapers of general circulation in the affected area ~~or~~ AND by service of the notice by mail or other means WITHIN 48 HOURS OF ISSUANCE OF THE ORDER.

118.7. Penalties and enforcement.

A ANY person who violates this chapter, fails to carry out duties and responsibilities imposed by this chapter, or impedes or interferes with [action] ACTIONS undertaken or ordered under this chapter shall be subject to the penalties under 35 Pa. C.S. § 7707. Violation of any provision of this chapter is a summary offense enforceable by proper law enforcement authorities or private citizens in accordance with 234 Pa. Code Chapters 50 (relating to summary cases) and 6000 (relating to Rules of Criminal Procedure for the Municipal Court of Philadelphia).

118.8. Procedure for exemptions or variance from water use reductions BY SELF-SUPPLIED INDUSTRIAL OR COMMERCIAL WATER USERS.

(a) If compliance with water use reductions ordered under this chapter would result in extraordinary hardship upon a SELF-SUPPLIED INDUSTRIAL OR COMMERCIAL water user, he may apply for an exemption or variance.

(b) For purposes of this section, extraordinary hardship means a permanent damage to property, INCLUDING PERISHABLE RAW OR PROCESSED PRODUCT, or other personal or economic loss which is substantially more severe than the sacrifices borne by other water users subject to this chapter.

(c) A ~~person or business entity~~ SELF-SUPPLIED INDUSTRIAL OR COMMERCIAL WATER USER WHO BELIEVES ~~believing~~ he suffers an extraordinary hardship and DESIRES ~~desiring~~ to be wholly or partially exempt from the reductions ordered under this chapter may apply for an exemption or variance under the following procedures:

(1) The applicant shall submit a written request with full documentation supporting the need for the requested relief to:

Commonwealth Drought Coordinator
c/o Department of Environmental Resources PROTECTION
P.O. Box 1467-8555
Harrisburg, Pennsylvania ~~17120~~-17105-8555

(2) The application shall contain information specifying:

(i) The nature of the hardship claimed, and reason for the requested exemption or variance.

(ii) The efforts taken by the applicant to conserve water and the extent to which water use may be reduced by the applicant without extraordinary hardship.

(3) The Commonwealth Drought Coordinator OR HIS DESIGNEE, will review the application in consultation with ~~the staff of PEMA and other~~ appropriate Commonwealth agencies, and may request the applicant to provide within a reasonable time additional information as necessary to review the application.

(4) The Commonwealth Drought Coordinator OR HIS DESIGNEE ~~and Council~~ is authorized to render a decision regarding applications RECEIVED for exemption or variance. The Commonwealth Drought Coordinator OR HIS DESIGNEE will provide the applicant ~~and other interested parties~~ notice in writing of the decision and the reasons for the decision. ~~Where~~ WHEN possible, the COMMONWEALTH Drought Coordinator OR HIS DESIGNEE will provide a WRITTEN decision within 7 working days, OR IF PERISHABLE PRODUCTS ARE INVOLVED, WITHIN ONE WORKING DAY of submission of an application or ~~of~~ WILL REQUEST additional information as necessary to review the application. WHERE APPROPRIATE, THE COMMONWEALTH DROUGHT COORDINATOR MAY ISSUE A STATEWIDE EXEMPTION OR VARIANCE TO SIMILARLY SITUATED WATER USERS. A NOTICE OF THE DECISION WILL BE PUBLISHED IN THE *PENNSYLVANIA BULLETIN*. Unless appealed under this section, the decision of the COMMONWEALTH Drought Coordinator OR HIS DESIGNEE shall be considered a final action on the application.

(5) ~~Any~~ A person aggrieved by a decision of the Commonwealth Drought Coordinator OR HIS DESIGNEE may, within 30 days of WRITTEN notice of the DECISION OR PUBLICATION OF NOTICE OF THE DECISION IN THE *PENNSYLVANIA BULLETIN*, appeal the decision to ~~the Council~~ PEMA.

(6) An appeal from an initial decision of the Commonwealth Drought Coordinator OR HIS DESIGNEE ~~may~~ WILL not act as an AUTOMATIC *supersedeas*, but, upon cause shown and where the circumstances require it, PEMA ~~the Drought Coordinator and the Council, or both,~~ will have the power to grant a *supersedeas*.

(7) When an initial decision is appealed, ~~the Commonwealth Drought Coordinator~~ PEMA will provide the applicant WITH an opportunity for a hearing. ~~The Commonwealth Drought Coordinator may act as the hearing examiner, or~~ PEMA may appoint a hearing examiner WHO MAY BE AN ADMINISTRATIVE LAW JUDGE OF THE PUBLIC UTILITY COMMISSION. HEARINGS MAY BE HELD TELEPHONICALLY. ~~A hearing will be conducted under 1 Pa. Code Part II (relating to general rules of administrative practice and procedure).~~

(8) The hearing examiner will provide the record of the hearing, if any, and a recommendation to PEMA ~~and Council~~ for review and adoption.

(9) ~~The Council~~ PEMA will notify the applicant in writing of its final decision and the reasons for the decision regarding the appeal.

(d) An exemption or variance will be granted only to the extent necessary to relieve extraordinary hardship and will require and be conditioned upon compliance with all reasonable conservation measures required by this chapter or the variance or exemption.

(e) An exemption or variance ~~approved by the Council~~ may be modified or rescinded BY THE COMMONWEALTH DROUGHT COORDINATOR if public health, safety and welfare require further reduction in water use.

(f) An exemption or variance granted to ~~an applicant~~ A WATER USER for a specific property, purpose or person is not transferable to another property, purpose or person without prior written approval from PEMA ~~and Council~~ THE COMMONWEALTH DROUGHT COORDINATOR.

118.9 ~~Implementation period.~~ COUNTY DROUGHT MANAGEMENT TASK FORCE

~~This chapter shall be implemented upon declaration by the Governor of a drought or water shortage emergency, and shall remain in effect during the period of the emergency until terminated by action of the Governor or by order of PEMA. Notice of the termination of the drought emergency and the reversion of this chapter to a standby status shall be submitted to the Legislative Reference Bureau for suggested publication in the *Pennsylvania Bulletin*.~~

- (A) WITHIN THE TIMEFRAME SPECIFIED IN THE GOVERNOR'S PROCLAMATION OF DROUGHT EMERGENCY, THE COUNTY COMMISSIONERS OF ALL COUNTIES LOCATED WITHIN THE DESIGNATED DROUGHT EMERGENCY AREA SHALL ESTABLISH A DROUGHT MANAGEMENT TASK FORCE WITHIN THEIR COUNTY. THE COUNTY TASK FORCE SHALL COORDINATE AND MONITOR ALL DROUGHT REPORTING AND WATER CONSERVATION

MEASURES UNDERTAKEN WITHIN THEIR COUNTY AS NECESSARY TO ENSURE THE PROVISION OF SAFE AND RELIABLE DRINKING WATER SOURCES. THE COUNTY TASK FORCES SHALL BE COMPRISED OF COUNTY EMERGENCY MANAGEMENT OFFICIALS, PUBLIC WATER SUPPLY AGENCY REPRESENTATIVES, ELECTED OFFICIALS, HEALTH OFFICIALS, FIRE OFFICIALS, LAW ENFORCEMENT OFFICIALS, AFFECTED BUSINESS AND INDUSTRY REPRESENTATIVES, AND OTHERS AS THE COUNTY MAY DETERMINE. THE COUNTY COMMISSIONERS WILL COORDINATE, AND REPORT TO THE COMMONWEALTH DROUGHT COORDINATOR ON COUNTY TASK FORCE ACTIVITIES TO INCLUDE, BUT NOT LIMITED TO, PUBLIC INFORMATION, PLANNING, WATER SYSTEM VULNERABILITIES, ENFORCEMENT COORDINATION, FIRE PROTECTION, AND OTHER AREAS OF PUBLIC CONCERN.

- (B) FOR THE DURATION OF THE DROUGHT EMERGENCY, EACH COUNTY DROUGHT MANAGEMENT TASK FORCE SHALL PREPARE AND SUBMIT TO THE COMMONWEALTH DROUGHT COORDINATOR A MONTHLY REPORT DESCRIBING THE SEVERITY AND IMPACT OF DROUGHT CONDITIONS. THE REPORT IS DUE THE FIRST DAY OF EACH MONTH AND SHALL DESCRIBE THE DROUGHT IMPACT ON THE PUBLIC, BUSINESS AND INDUSTRY AND THE AGRICULTURE COMMUNITY. THE REPORT WILL IDENTIFY STEPS TAKEN TO IMPLEMENT WATER CONSERVATION AND PUBLIC EDUCATION,
- (C) THE COUNTY DROUGHT MANAGEMENT TASK FORCE MEETINGS SHALL BE OPEN TO THE PUBLIC AND SHALL COMPLY WITH STATE PUBLIC MEETING SUNSHINE REQUIREMENTS.

118.10. ~~Effective Date.~~

~~—This chapter shall take effect immediately upon adoption by the council.~~

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

I.D. NUMBER: 30-55
SUBJECT: Reductions of Major Water Use in the Delaware River Basin Drought Emergency Area
AGENCY: PA Emergency Management Agency

TYPE OF REGULATION

- X Proposed Regulation
Final Regulation
Final Regulation with Notice of Proposed Rulemaking Omitted
120-day Emergency Certification of the Attorney General
120-day Emergency Certification of the Governor
Delivery of Tolled Regulation
a. With Revisions b. Without Revisions

RECEIVED
2000 OCT 24 AM 10:40
LEGISLATIVE
REGULATORY
REVIEW COMMISSION

FILING OF REGULATION

| DATE | SIGNATURE | DESIGNATION |
|----------|---------------------|---|
| 10/24/00 | <i>Paula Hand</i> | HOUSE COMMITTEE ON VETERANS AFFAIRS AND EMERGENCY PREPAREDNESS |
| 10/24/00 | <i>Lance Koppke</i> | |
| 10/24/00 | <i>Valerie Keen</i> | SENATE COMMITTEE ON STATE GOVERNMENT |
| 10/24/00 | <i>Jerry Gudo</i> | |
| 10/24/00 | <i>St. Helme</i> | INDEPENDENT REGULATORY REVIEW COMMISSION |
| | | ATTORNEY GENERAL |
| 10/24/00 | <i>C. L. Brown</i> | LEGISLATIVE REFERENCE BUREAU |

October 19, 2000

**TRANSMITTAL SHEET FOR REGULATIONS SUBJECT TO THE
REGULATORY REVIEW ACT**

RECEIVED

I.D. NUMBER: 30-55

2001 FEB -2 AM 8:55

SUBJECT: Reductions of Major Water Use in the Delaware River Basin Drought Emergency
Area

REVIEW COMMISSION

AGENCY: PA Emergency Management Agency

TYPE OF REGULATION

X Proposed Regulation

Final Regulation

Final Regulation with Notice of Proposed Rulemaking Omitted

120-day Emergency Certification of the Attorney General

120-day Emergency Certification of the Governor

Delivery of Tolled Regulation

a. With Revisions

b.

Without Revisions

FILING OF REGULATION

DATE

SIGNATURE

DESIGNATION

1/30/01

Paula Hand

HOUSE COMMITTEE ON VETERANS AFFAIRS AND
EMERGENCY PREPAREDNESS

1/30/01

Laurie Koppelman

1/30/01

Valerie Kellen

SENATE COMMITTEE ON STATE GOVERNMENT

1/31/01

L. Sander

2/2/01

E. Pagan

INDEPENDENT REGULATORY REVIEW COMMISSION

ATTORNEY GENERAL

LEGISLATIVE REFERENCE BUREAU

January 30, 2001